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In Re the Matter of the Proposed Amendment to  
Wisconsin Statutes § 809.86

MEMORANDUM  
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Mark A. Neuser, Supreme Court Commissioner, on behalf of the State Bar of Wisconsin Appellate Practice Section Board (the “Board”),<sup>1</sup> submits this memorandum in support of the administrative rule petition asking the court to amend Wis. Stat. § (Rule) 809.86. This petition is directed to the Supreme Court’s rule-making authority under Wis. Stat. § 751.12.

Wisconsin Stat. § (Rule) 809.86—which this court adopted in 2015, see Rule Petition 14-01—addresses crime victim privacy concerns that result from public access to searchable documents posted on the Wisconsin Supreme Court and Court of Appeals Case Access (WSCCA) website. Specifically, § (Rule) 809.86 provides a measure of protection for victims by prohibiting the use of their names in appellate briefs. Parties may instead identify a victim by one or more initials or other appropriate pseudonym or designation.

By its terms, Wis. Stat. § (Rule) 809.86 applies only to appellate briefs, and not other appellate filings. This is so, according to a Judicial Council Note accompanying the rule, because only appellate briefs, and not other appellate filings, are currently made available online to the public via the WSCCA website.

As the court is well aware, the court is in the process of implementing an exclusively electronic filing system applicable to attorneys for all case types in the Court of Appeals and Supreme Court. See Rule Petition 19-02 (approving appellate efilings pilot project). As part of this project, the Board encourages the court to consider making petitions for review and responses publicly available online via the WSCCA website. Attorneys already must electronically file these documents under Wis. Stat. § (Rule) 809.62(4)(b). Making them publicly available online will benefit both litigants and the court, as litigants will be able to readily see the issues other litigants have presented for the court’s review and tailor their own arguments accordingly.

The purpose of this rule petition is to expand Wis. Stat. § (Rule) 809.86 to include petitions for review and responses. By doing so, the identity of victims and others will be safeguarded if, as the Board urges, this court chooses to make these documents publicly available online via the WSCCA website, in the same manner as appellate briefs are currently available. The Board notes that it has consulted both Sheila Reiff, the Clerk of the Supreme Court and the Court of Appeals, and Michelle L. Viste, Executive Director of the Wisconsin Department of Justice Office of Crime Victim Services, regarding this petition. Both support the petition.

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<sup>1</sup> The Appellate Practice Section Board is comprised of the following members: Hon. Brian Blanchard, Atty. Frances Philomene Colbert, Atty. Joseph S. Diedrich, Atty. James Eric Goldschmidt, Atty. Amy Hetzner, Atty. Melissa Eleanor Love Koenig, Atty. Lisa M. Lawless, Atty. Anne-Louise T. Mittal, Comm. Mark A. Neuser, Atty. Aaron R. O’Neil, Atty. Eric G. Pearson, Atty. Jeremy C. Perri, Atty. Donald L. Romundson, Atty. Michelle L. Velasquez, Atty. Donald J. Wall. Board member Atty. Clayton P. Kowski did not participate in this petition.

The Board therefore urges the court to amend Wis. Stat. § (Rule) 809.86, as set forth in the petition accompanying this memorandum.

Respectfully submitted this 26th day of September, 2019.

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Mark A. Neuser  
Supreme Court Commissioner